

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 50 OF 2020

*(Originating from the Judgment of District Land and Housing
Tribunal for Mkuranga in Land Application No.117 of 2018 before R.
Mwakibuja -Chairperson)*

HALIMA MOHAMED LIPONGO APPELLANT

VERSUS

SEMENI ALLY LIPONGO RESPONDENT

RULING

Date of last Order: 09.06.2022

Date of Ruling: 09.06.2022

A.Z.MGEYEKWA, J

This is an application for Revision against the decision of the District land and Housing Tribunal for Mkuranga at Mkuranga, in Land Application No. 117 of 2018 delivered on 28.02.2019.

The application is brought under section 43 (1) (b) of the Land Disputes Courts Act, Cap 216 [R.E. 2019] The application is supported by an affidavit deponed by Halima Mohamed Lipongo (the applicant).

When the matter came for hearing the applicant and respondent appeared in person without any legal representation.

The applicant and respondent in their submission, submitted much on the merit of the case which was before the District Land and Housing Tribunal which I am not going to produce in this application. However, I had to go through the court file and find out what transpired.

In the applicant's Chamber Summons, she prayed for the following orders: -

- a) That, this Honourable Court be pleased to call for and examine the record of the Mkuranga District Land and Housing Tribunal in Land case No. 117 of 2018 for the purpose of satisfying itself as to the correctness, legality, or propriety of the judgment and decree and to issue proper and appropriate directions to re-establish within those proceedings propriety, consistency, rationality, and legality of the proceedings in the interest of justice.
- b) That, this Honourable Court be pleased to exercise its revision jurisdiction and revise the whole proceedings, judgment, and decree

in Land Case No. 117 of 2018 as there are errors material to the merit of the case involving injustice.

c) Costs and

d) Any other relief(s) this honourable Tribunal deem fit to grant.

Having gone through the District Land and Housing Tribunal records, I have noted that, the applicant among other things, filed a Misc. Application No. 117 of 2018. They applied for an enlargement of time for the applicant to file an application for Revision against the Judgment of the Mipeko Ward Tribunal in Land case No.01B/2016. The District Land and Housing Tribunal determined the application and ruled out that the applicant did not state good reasons for the extension of time, hence, the Chairperson dismissed the application.

I have scrutinized the Ruling issued by the District Land and Housing Tribunal Chairperson for Mkuranga at Mkuranga and noted that the Chairperson did not consider the applicant's affidavit which supported his application for an extension of time. Reading closely the affidavit, I found that the applicant in paragraphs 11 and 12 of the affidavit claimed that in the process of preparing the application she fall sick and underwent prolonged medical treatment at Muhimbili National Hospital. To support her claims she attached a medical chits. However, when the Chairman determined the application he did not analyse the grounds for extension

time. In my considered view, the applicant raised sufficient and justifiable grounds for extension of time. The history tells it all that she was unwell for a long time and she was admitted and hospitalized at the Muhimbili National Hospital several times. She was honest to attach the medical chits for the year 2011 and 2016 and prove that she was undergoing medical treatment for a long time.

In my considered view, the applicant convinced the tribunal that her delay was due to his sickness which is explicable and excusable as stated in the case of **John David Kashekya v The Attorney General**, Civil Application No. 107 of 2012 CAT (unreported). The Court of Appeal of Tanzania held that: -

"Sickness is a condition which is experienced by a person who is sick. It is not a shared experience. Except for children which are yet in a position to express their feelings, it is the sick person who can express his/her conditions whether he/she has the strength to move, work and do whatever kind of work he or is required to do."

Guided by the above authority, it is clear that sickness is reasonable ground for a person who has failed to do a certain action at the required time. In the situation at hand, I want to believe that the applicant was not in good health to attend the matter at the tribunal due to her sickness.

In the upshot, I am satisfied that the applicant adduced good grounds for an extension of time to file an application for revision. The applicant is ordered to file an application for Revision before the District Land and Housing Tribunal for Mkuranga within 45 days from the date of this Ruling. For the avoidance of doubt, the circumstances of this application are such that there should be no order to costs.

Order accordingly.

Dated at Dar es Salaam this date 9th June, 2022.




A.Z.MGEYEKWA

JUDGE

09.06.2022

Ruling delivered on 9th June, 2022 in the presence of both parties.




A.Z.MGEYEKWA

JUDGE

09.06.2022